

## **SPECIAL MEETING**

### **CIVIL SERVICE COMMISSION MINUTES**

**September 30, 1998**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 301 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin, President  
Roy Dixon, Vice-President  
Mary Gwen Brummitt

Comprising a quorum of the Commission

Absent were:

Valencia-Cothran being absent  
Sigrid Pate

Larry Cook, Executive Officer  
Ralph Shadwell, Deputy County Counsel  
Joy Kutzke, Reporting

CIVIL SERVICE COMMISSION MINUTES  
September 30, 1998

**Special Meeting**

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and  
Pending Litigation

2:30 p.m.      OPEN SESSION: Room 301, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,7,8,13,15,20	11,12,15		3,4

COMMENTS Motion by Dixon to approve all items not held for  
discussion; seconded by Brummitt. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda.**

- a. Commissioner Austin: James Gattey, Esq., on behalf of **Joseph Alkire** appealing an Order of Demotion, Suspension and Transfer from the Probation Department.
- b. Commissioner Brummitt: **Patricia Minnich** alleging age discrimination by the Health and Human Services Agency.
- c. Commissioner Valencia-Cothran: **Mike Chase** alleging national origin discrimination by the Health and Human Services Agency.

**REGULAR AGENDA**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of September 2, 1998.

**Approved.**

## CONFIRMATION OF ASSIGNMENT

2. Commissioner Valencia-Cothran as hearing officer in the appeal of **Ronald Jordan** from an Order of Termination from the Department of the Public Defender.

**Confirmed.**

## WITHDRAWALS

3. Robert A. McLaughlin, Esq., on behalf of **Linda Hannon**, appealing an Order of Separation from the Health and Human Services Agency. Commissioner Valencia-Cothran previously assigned.

**Withdrawn.**

4. **Luz Elena Quintanar, Josefina Bularan, Laura Diaz, Joan Durkin and Maria T. Gomez and Maria Quiroz**, employees of Health and Human Services Agency requesting a Rule X Selection Process hearing regarding DHR's determination that they were ineligible to compete for Patient Services Specialist I's and II's. No one previously assigned.

**Withdrawn.**

## STIPULATED AGREEMENT

5. Commissioner Dixon: James Gattey, Esq., on behalf of **Sue Riley**, from an Order of Termination from the Sheriff's Department.

RECOMMENDATION: Approve agreement.

**Stipulated agreement approved.**

## DISCIPLINARY FINDINGS

6. Commissioner Brummitt: Dung Tran, S.E.I.U. Local 2028 on behalf of **Howard Hong** appealing an Order of Termination from the Assessor/Recorder/County Clerk.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - inefficiency (unable or unwilling to meet established production goals); Cause II - insubordination (failure to follow supervisors' instructions); Cause III - failure of good behavior (failure to return inquiries and telephone calls); Cause IV - incompetency; and Cause V - acts incompatible or inimical to the public service. Employee had been employed by the County for 22 years and during that time had a history of producing a low volume of work. The Department counseled Employee and made various accommodations to help him improve his volume of work. Employee was in receipt of unsatisfactory performance appraisals indicating

further deterioration in his performance. This hearing officer concludes that the evidence demonstrated that Employee has continuously failed to produce an acceptable level of work and that the problem existed throughout his 22 year span of employment with the County; and that the Department is to be faulted for its failure to use progressive discipline. Employee is guilty of Causes I, II, IV and V except for Cause I.C.. Cause III with the exception of Cause III.C. was not proven to be true. It is therefore recommended that the Order of Termination be affirmed and that the proposed decision shall become effective upon the date of approval of the Civil Service Commission.

Commissioner Dixon expressed concerns that Employee had never received any prior discipline which may have caused him to realize the seriousness of his status as it relates to productivity in the Department. Commissioner Brummitt explained that the Department counseled employee; changed his work site and provided other forms of accommodations in attempts to give Employee the opportunity to succeed.

**Motion by Brummitt to approve Findings and Recommendations;  
seconded by Dixon for the purpose of discussion. Carried.  
Dixon - No.**

7. Commissioner Austin: James Gattey, Esq., on behalf of **Joseph Alkire** appealing an Order of Demotion, Suspension and Transfer from the Probation Department.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - negligently exposing the public to significant risk or harm (failed to allow a detainee access to the restroom and failure to properly supervise the removal of contaminated waste); Cause 2 -- conduct unbecoming an officer of the Probation Department and the County of San Diego; Cause 3 - inefficiency; Cause 4 - failure of good behavior; and Cause 5 - acts incompatible with and inimical to the public service. Employee was on duty at the time a fight erupted between two detainees of differing gang affiliations which resulted in the presence of blood in the hallway. A lock-down of the facility ensued. For safety and liability reasons traffic is prohibited to and from cells when a hallway is wet after cleanup, resulting in detainees being kept in their rooms until the hallways are dried. Subsequently, detainees were taking turns systematically in order to be released from their rooms to use the restroom. One of the detainees requested priority treatment, but was denied by Employee for various rational reasons. Employee responded to the detainee's demands with a comment to the effect that if he really needed to use the restroom, he should minimize the mess by using a towel. The detainee did in fact defecate on the towel in the corner of the room. Detainees and staff members cleaned up the room by placing the towel in a plastic bio-hazard bag and washed the room with a bleach and water solution and sprayed it with a disinfectant. This hearing officer concludes that

Employee neither expected nor desired the detainee to defecate in his room; Employee and other staff members were dealing with more significant competing concerns regarding potential violence; Employee properly decontaminated the room and disposed of the waste appropriately with the exception of having forgotten to transfer the bag of waste from an interim trash container to the proper trash container. Employee is not guilty of Causes 1, 2, 3, 4, and 5. It is therefore recommended that the Order of Demotion, Suspension, Transfer and Charges be reversed; employee will be awarded back pay and benefits for the suspension and for the difference between CDPO I and CDPO II from the date of the demotion, suspension and transfer until the date of the Commission's decision; and the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations; seconded by Brummitt. Carried.**

## **PROCEDURAL INVESTIGATIONS**

### **Complaints**

8. **Deborah Olberding**, S.E.I.U. Local 2028, requesting a Rule XI investigation regarding the manner in which EOMO was abolished and the use of the Office of Internal Affairs to investigate discrimination cases.

RECOMMENDATION: Deny request. (Continued from 8/19/98 and 9/2/98 CSC meetings.)

Adell Burge addressed the Commission on behalf of S.E.I.U. Local 2028, regarding the manner in which EOMO was abolished, specifically without reflecting such change in Civil Service Rule VI pertaining to discrimination investigations. She expressed further concern with the appointment of Internal Affairs as the means by which the Commission will be reviewing discrimination complaints. She pointed out that the Internal Affairs Director is appointed by and reports directly to the CAO and, due to the management structure of the County, may be hard pressed to find against department heads who work for the same CAO and his management.

Larry Cook reported to the Commission that County Counsel and DHR have suggested that it would be appropriate to determine that Internal Affairs is the Commission's investigating officer for its discrimination complaints and that by doing so the Commission is abiding by Civil Service Rule VI as it stands. Mr. Cook, on behalf of the Commission, has requested that Rule VI be modified to reflect the changes.

**Motion by Dixon to approve staff recommendation; seconded by Brummitt. Carried.**

## SELECTION PROCESS FINDINGS/COMPLAINTS

### Findings

9. **Melanie L. Burkhardt** appealing removal of her name by DHR from the employment list for Corrections Deputy Sheriff for failure to meet the employment standards.

FINDINGS AND RECOMMENDATION: Ratify Item No. 9. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Ratified.**

### Complaints

10. **Stephen Brian Pasarilla** appealing DHR's determination that he is ineligible to compete for a position with the County of San Diego.

RECOMMENDATION: Deny request.

**Staff recommendation approved.**

11. Marsha M. Duggan, Public Defender Association Representative, on behalf of **Liesbeth Vandenbosch**, Deputy Alternate Public Defender III, appealing her non-selection by the Alternate Public Defender for a promotion as a Deputy Alternate Public Defender IV.

RECOMMENDATION: Deny request.

**Continued to next CSC meeting.**

12. **Patricia Minnich** appealing the selection process by the HHSA having been denied promotion to Protective Services Worker II.

RECOMMENDATION: Hold in abeyance pending input from the agency. (See also Item Nos. 13 and 20 below).

**Staff recommendation approved.**

## DISCRIMINATION

### Findings

13. Commissioner Brummitt: **Patricia Minnich** alleging age discrimination by the Health and Human Services Agency. (See also Item Nos. 12 above and 20 below.)

FINDINGS AND RECOMMENDATIONS:

The Complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA has been received

and reviewed by this Investigating Officer, who concurs with the findings that complainant failed to establish allegations of discrimination based on age; and probable cause that a violation of discrimination laws occurred was not established. OIA has noted that Ms. Minnich raised many issues that may warrant the granting of a Rule X Selection Process hearing. Therefore, it is recommended that Patricia Minnich's discrimination complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a findings of no probable cause that the Complainant has been discriminated against on any basis protected by law.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Dixon. Carried.**

14. Commissioner Valencia-Cothran: **Mike Chase** alleging national origin discrimination by the Health and Human Services Agency.

#### FINDINGS AND RECOMMENDATIONS:

The Complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA has been received and reviewed by this Investigating Officer, who concurs with the findings that Complainant failed to establish allegations of discrimination based on national origin; and probable cause that a violation of discrimination laws occurred was not established. Therefore, it is recommended that Mike Chase's complaint be denied; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a findings of no probable cause that the Complainant has been discriminated against on any basis protected by law.

**Motion by Dixon to approve Findings and Recommendations; seconded by Brummitt. Carried.**

#### RECONSIDERATION

15. **Alicia Mariscal** requesting reconsideration for a Rule XI investigation regarding the manner in which she was discharged from the Department of Agriculture, Weights and Measures. (Previously on 8/19/98 agenda.)

RECOMMENDATION: Deny request.

John Richards, Esq., addressed the Commission on behalf of Ms. Mariscal. His client is requesting that the Commission conduct another more in-depth investigation relating to the circumstances surrounding her resignation from the Department of Agriculture, Weights and Measures. The Commission had conducted an investigation at Ms. Mariscal's request June 7, 1997, which was limited to merit issues. Mr. Richards reminded the Commission of Ms. Mariscal's roll as a Whistle Blower and subsequent alleged retaliation by the Department by diminishing her duties and responsibilities. He stated

that due to the Whistle Blower's investigation, there was a Federal Grand Jury indictment (which was also reflected in the Commission's 9/7/97 Findings). Ms. Mariscal has litigation pending before the Court; however, further action at that level has been stymied due to County Counsel's representation to the Court, and the Court's concurrence, that Ms. Mariscal has not exhausted her administrative remedies before the Commission prior to filing her lawsuit. Mr. Richards is requesting an investigation to cover a broader scope than the Commission's previous investigation as well as to satisfy the Court's requirement. Larry Cook, Executive Officer, remained with his recommendation to deny the request mainly due to its lack of timeliness. There was extensive discussion amongst the Commissioners raising concerns regarding the issues raised as well as available remedies should Ms. Mariscal be successful at her investigation. Mr. Shadwell, Deputy County Counsel, advised that the Commission has broad powers to remedy wrongs discovered as the result of an investigation. Kathy Davee, Personnel Officer on behalf of the Department, addressed the Commission recalling that Ms. Mariscal had resigned prior to the commencement of the prior investigation and that the investigation conducted on this subject matter by Commissioner Dixon was in-depth and covered multiple issues.

**Motion by Austin to continue to next CSC meeting; seconded by Dixon. Carried.**

## **OTHER MATTERS**

### **Extension of Temporary Appointments**

#### **16. Assessor/Recorder/County Clerk**

2 Appraiser II's (Benito Ruiz and Harry L. Oakland)

#### **17. Health & Human Services Agency**

2 Residential Care Worker I's (Dorothy James and Priscilla Strader)

1 Residential Care Worker II (Dona Abbott)

#### **18. Housing and Community Development**

1 Housing Specialist I (Carol J. Baier)

1 Housing Aide (Janette Grutzmacher)

#### **19. CAO - Media/Public Relations**

1 Public Information Specialist (Rene Q. Carmichael)

RECOMMENDATION: Ratify item Nos. 16 through 19.

**Item Nos. 16 through 19 ratified.**



## **Performance Appraisals**

20. **Patricia Minnich**, an employee of the Health and Human Services Agency, requesting the sealing of her performance appraisal covering the period August 22, 1996 to August 22, 1997. (See also Item Nos. 12 and 13 above.)

RECOMMENDATION: Deny request. (Continued from 8/19/98 and 9/2/98 CSC meetings.)

Ms. Minnich addressed the Commission pointing out procedural deficiencies by the department in the preparation and presentation of her performance appraisal covering the period 8/22/96 to 8/22/97. Larry Cook responded that the appraisal was issued one day late and due to the flexibility of Rule V, he does not believe it significant enough to seal the appraisal. Diane Murphy, on behalf of HHSA, informed the Commission that Ms. Minnich had appealed the appraisal through the departmental appeal process and the appeal officer upheld the ratings. Input from several managers caused the one day delay in filing the appraisal.

**Motion by Brummitt to approve staff recommendation; seconded by Dixon. Carried.**

21. Ratification of Linda M. Altes, Ph.D. (specialty in diagnosing learning disabilities) and Dennis L. Costello, M.D. (cardiologist) as additional names to the list of medical and psychological providers to be used for fitness for duty evaluations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify providers.

**Ratified.**

22. Public Input.

ADJOURNMENT: 4:05 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE OCTOBER 28, 1998.**